**PT 00-12**
**Tax Type: Property Tax**
**Issue: Religious Ownership/Use**

**STATE OF ILLINOIS**
**DEPARTMENT OF REVENUE**
**OFFICE OF ADMINISTRATIVE HEARINGS**
**CHICAGO, ILLINOIS**

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| **VINEYARD CHRISTIAN FELLOWSHIP OF EVANSTON, APPLICANT** | **Docket No: 98-PT-0072 (97-16-488)** |
| **v.** | **Real Estate Exemption For 1997 Tax Year** |
| | **P.I.N. 11-18-121-019** |
| | **Cook County Parcel** |
| **STATE OF ILLINOIS DEPARTMENT OF REVENUE** | **Robert C. Rymek Administrative Law Judge** |

## RECOMMENDATION FOR DISPOSITION

**APPEARANCES**: Mark Sargis of Mauck, Beland & Cheely on behalf of the applicant. Jack M. Siegel of Altheimer & Gray and City Attorney Kathleen Brenniman on behalf of the intervenor, the City of Evanston. Mr. Shepard Smith, Special Assistant Attorney General, for the Illinois Department of Revenue.

## SYNOPSIS

This proceeding raises the issue of whether Cook County Parcel Index Number 11-18-121-019 (hereinafter the "subject property" or "subject parcel"), should be exempt from 1997 property taxes under section 15-40 of the Property Tax Code, which exempts property used for religious purposes. 35 ILCS 200/15-40.

This controversy arose as follows:

The applicant, Vineyard Christian Fellowship of Evanston, filed an Application for Property Tax Exemption with the Cook County Board of Review seeking exemption for the subject property. The Board reviewed the applicant's complaint and on March 23, 1998,

recommended that the second floor and one-half of the first floor be granted an exemption from property taxes for the period from May 8, 1997 through December 31, 1997. On March 26, 1998, the Illinois Department of Revenue (hereinafter the "Department") concluded that 50% of the subject property was exempt for 48% of the 1997 tax year. The intervenor and the applicant filed a timely appeals. A formal administrative hearing was held at which evidence was presented. The Department, the intervenor, and the applicant were all represented by counsel. The intervenor contended that none of the subject property was entitled to exemption. The applicant argued that 100% of the subject property was entitled to exemption for the 65% of the 1997 tax year during which it owned the subject property. Following a careful review of all the evidence, it is recommended that the Department's determination that 50% of the subject property is entitled to exemption for 48% of the 1997 tax year should be affirmed except for with respect to the parking area which should be 100% exempt for 48% of the 1997 tax year.

## FINDINGS OF FACT

### The Department's Initial Determination

1. Dept. Gr. Ex. No. 1 and Dept. Ex. Nos. 3 and 4 establish the Department's jurisdiction over this matter and its position that 50% of the subject property was entitled to exemption for 48% of the 1997 tax year.

### Description of the Subject Property

2. The subject property is located at 1800 Ridge Avenue, in Evanston Illinois, and is 0.8148 of an acre in size. Dept. Group Ex. No. 1 Docs. A, C, E; Tr. III[1] p. 233.

3. The subject property is improved with a two-story building that occupies approximately 39,288 square feet. The building also contains a small basement.[2] Tr. I p. 197,

[1] This hearing was conducted on three separate dates: October 13, 22 and 26, 1999. Reference to the transcripts for each hearing day, respectively, will be "Tr. I", "Tr. II", and "Tr. III."

[2] There was testimony that there were "two basements" in the building. However the second basement was actually only three steps down from the first floor and described as a "semi-basement." Because the ceiling of this "semi-basement" was the same ceiling as the first floor, for purposes of simplicity and clarity, this "semi-basement" will be referred to as the "semi-basement" and will be considered as a part of the first floor. Tr. II pp. 45-51; Tr. III p. 45.

271-72; Tr. II pp. 47-48, 232-233; App. Ex. No. 10; Dept. Gr. Ex. No. 1D; Intervenor Exhibit No. 3.

4. The building was originally constructed for an automobile dealership and, more recently, the second floor had been converted into office space. Tr. I. p. 197.

5. The subject property includes a 22-space parking lot which is located south of, and adjacent to the building. Tr. I p. 199; App. Ex. No. 10.

6. Besides the applicant, its members, and its staff, no other organization or business conducted any activities at the subject property during 1997. Tr. I p. 224; Tr. II pp. 112-113.

7. Applicant used the parking area immediately after purchase of the subject property. Tr. I pp. 272-273.

8. The parking area contains approximately 22 parking spaces. App. Ex. No. 10.

9. Applicant did not lease any portion of its property during 1997. Tr. I p. 224-225.

**Description of the Applicant Organization**

10. Applicant was incorporated in 1976[3] under the Illinois General Not for Profit Corporation Act as Christ Church of the North Shore, Inc. Tr. I pp. 161-163; App. Ex. No. 4.

11. On November 15, 1985, the applicant amended its Articles of Incorporation to reflect the new name "Vineyard Christian Fellowship of Evanston, Inc." The corporation is currently in good standing. Tr. I pp. 161-163; App. Ex. No. 4.

12. Applicant's Articles of Incorporation state, *inter alia*: "The purposes of this church shall be to worship God and to promote the interests and ministry of the Kingdom of God to the Body of Christ and the world." App. Ex. No. 4.

13. Applicant's constitution and by-laws provide that its purposes are "to worship God, to obey God, to promote the interests and ministry of the Kingdom of God in the world, and to fulfill the complete calling of God for the Church in outreach and discipleship. App. Ex. No. 3.

[3] Unless otherwise specified all the following findings of fact refer to the tax year in question (1997).

14. In 1997, Rev. William Hanawalt was the applicant's Executive Pastor. Tr. I p. 147; App. Ex. No. 2.

15. Hanawalt engages in both pastoral and administrative activities. Tr. I p. 148.

16. Hanawalt's pastoral activities include preaching, counseling, performing wedding and funerals, training volunteers, and meeting and visiting members of the congregation. Tr. I pp. 147, 156.

17. Hanawalt's administrative duties include supervision of all operations of the church organization, including the building manager, business manager and other church staff, and responsibility for the physical dimensions of church life, including the building, finances, and legal and tax matters for the church. Tr. I pp. 147-148.

18. Applicant has six full-time and two part-time pastors. The applicant also has six full-time and nine part-time members of its support staff. Tr. I p. 166.

19. The applicant engages in mission work, which includes starting churches, relief work, drug rehabilitation, outreach, and other service to people outside the applicant's local church. Tr. I pp. 151-153.

20. The applicant also engages in evangelism by articulating the tenets of its faith to other people who show interest and by offering those people an opportunity to follow in the applicant's faith. Tr. I pp. 153-154.

21. The applicant publishes music and music is an important part of the applicant's worship services. Tr. II, pp. 159-161.

22. The Internal Revenue Service granted the applicant an exemption from federal income taxes on April 19, 1997, pursuant to section 501(c)(3) of the Internal Revenue Code. App. Ex. No. 5.

23. The Department granted the applicant a sales tax exemption number which was valid during 1997. Tr. I pp. 164-165; App. Ex. No. 6.

**Property Search, Financing and Acquisition**

24. Prior to 1996, the applicant had been searching for suitable property to serve as a permanent home for the church's infrastructure, including its ministries, administration and offices. The applicant also hoped to utilize the property for worship services. Tr. I pp. 184, 190.

25. In January, 1996, Eric Eriksson first saw the subject property. Tr. II p. 227.

26. Eriksson, a licensed architect and real estate salesperson, had significant experience in church design and construction projects, including the preparation and submittal of permit applications. Tr. II pp. 209-210, 212-217.

27. Erickson prepared design concept drawings for the applicant on August 19, 1996, in order to help the applicant determine whether or not to purchase the subject property. Tr. II. p. 228; App. Ex. Nos. 21, 22.

28. The August 19, 1996 drawings reflected the entire second floor being used as office space, conference rooms, and bathrooms. The drawings also indicated that the eastern portion of the first floor would be used as a sanctuary (a place of worship), the middle portion of the first floor as a lobby and bathroom area, and the western portion as a "rentable" area. Tr. III p. 63; App. Ex. Nos. 21, 22.

29. Applicant entered into a contract to purchase the subject property in August 1996. Tr. I p. 202.

30. Immediately after signing the contract, applicant undertook a fundraising campaign to raise funds for the purchase and renovation of the property. The applicant also sought and obtained approval for additional bank financing. Tr. I p. 213.

31. Applicant acquired title to the subject property on May 8, 1997, pursuant to a special warranty deed. Tr. I p. 194; Dept. Gr. Ex. No. 1C.

32. The property had been vacant for several years prior to the applicant having acquired it. Tr. I p. 203

**Preliminary Plans and Repairs**

33. At the time of purchase, the first floor of the building had been virtually gutted, and the second floor had been built out with offices, training facilities and other administrative rooms. Tr. I p. 197. The applicant had plans to develop the entire building and had received approval for a bank loan in the amount of $600,000 for the complete renovation the property. The applicant had also obtained preliminary bids for build-out of the entire first floor. Tr. I pp. 195, 212.

34. Part of the applicant's plans changed when the City of Evanston denied zoning approval for a house of worship at the property. Tr. I pp. 208-214, 218-225.

35. Applicant took out a loan of $300,000 to complete the initial phase of renovation. Tr. I p. 195. Applicant had secured financing to complete build-out of a sanctuary if circumstances changed to allow a house of worship. Tr. I p. 210.

36. After purchasing the subject property, Applicant collected and added approximately $150,000 to its building fund during 1997. Tr. II p. 61.

37. Immediately after the purchase, the applicant began general cleaning for the move-in and minor repairs (e.g. cleaning the carpets, fixing a leaky roof, and replacing light bulbs). Tr. II pp. 16, 259-263.

38. The repairs continued in June and July of 1997, during which time the sprinkler and air-conditioning systems were repaired. Tr. II pp. 248-254.

39. As applicant's architect and project manager, Mr. Eriksson was primarily responsible for development of the property after purchase. He reported to Rev. Hanawalt and supervised the various subcontractors for the project. Tr. I pp. 206-207; Tr. II p. 235.

40. Mr. Eriksson solicited bids from contractors during applicant's first few months of ownership.[4] Tr. II p. 240.

**Use and Development of the Second Floor**

41. After purchasing the subject property, the applicant spent two months engaging in cleaning and other custodial preparation of the second floor before moving its daily operations into the second floor. Tr. I p. 226; Tr. II. p. 16.

42. The applicant began using the second floor of the subject property on July 11, 1997. Dept. Gr. Ex. No. 1 Docs. A, B.

43. The applicant used the eastern third of the second floor for administrative offices. Tr. I pp. 229-230. While most of this office area appears to have been used for purposes directly relating to the church's religious activities (pastoral offices, music ministries, women's ministries, etc.) or reasonably necessary to the fulfillment thereof (office supply closets, facility managers office, etc.) there was also office space for a bookstore manager and storage space that was used for bookstore supplies. Tr. I. pp. 229-230; App. Gr. Ex. No. 12.

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[4] Applicant offered for admission into evidence several documents purported to be bids solicited by Mr. Eriksson. App. Ex. Nos. 23 through 28. Following objections by the Department and the intervenor, these documents were not admitted into evidence. In its brief, the Applicant requests reconsideration of the ruling barring admission of these documents into evidence. While requests to review rulings made during the course of the hearing would ordinarily not be addressed in a recommendation, given the parties' positions during the litigation of this case there appears to be a strong possibility that one or both parties will seek administrative review. Accordingly, the following is noted for the benefit of any reviewing court.

Following reconsideration of the applicant's arguments regarding the exclusion of App. Ex. Nos. 23 through 28, it is determined that the ruling during the hearing was proper. As was noted during the hearing, there were a number of reasons why these exhibits were not admitted into evidence. Tr. II p. 251. Among the reasons set forth was that portions of the documents were, in part, illegible. Additionally, these documents lacked relevance because the mere existence of a contract or bid proposal does not tend to establish when or if the work was ever actually done. In this regard, it is noted that the applicant suffered no prejudice by exclusion of these exhibits because the applicant *was* allowed to elicit testimony concerning work that was actually performed. The applicant was simply not allowed to attempt to establish when the process of development and adaptation of the subject property occurred by relying upon documents which had legibility problems and which would be at most indicative only of the bidding process and not of the actual process of development and adaptation.

44. The applicant did not present any evidence regarding the location or nature of the bookstore itself.

45. Church "planting" is the process of establishing new churches. The headquarters of the applicant's national planting office is also located on the eastern third of the second floor of the building. Tr. I pp. 166, 276-277.

46. The applicant used the middle third of the second floor for other administrative and support functions, including training, planning, meetings of the church council and other committees, restrooms, and a staff kitchen and lounge. App. Gr. Ex. No. 12; Tr. I pp. 230, 232.

47. Applicant used the majority of the western third of the second floor for adult youth religious discussion, youth rehearsals for religious presentations, and religious counseling. Tr. I pp. 230, 233, 237-239.

48. Counseling, which is conducted by members of the church who are licensed counselors, is very important to applicant's vision and mission of providing pastoral counseling to married couples and individuals. Tr. I p. 233.

49. The western third of the second floor also contained a "tape library" room and a "book library" room. The applicant did not present any evidence regarding the nature of these libraries or their use. App. Gr. Ex. No. 12.

50. Except for offices and counseling rooms, which were used on a continuous basis, applicant maintained written logs to document some use of the western two-thirds of the second floor during 1997. However, the logs do not individually identify which rooms were used for which specific activities. Tr. II pp. 33-36; App. Ex. 16.

51. In late summer of 1997, an elevated bridge connecting the building to another building was removed and the building façade was restored. Tr. I. pp. 263-264; Tr. II pp. 260-261.

**Development and Use of the First Floor**

52. The first floor of the building was "basically empty" when the applicant moved in on July 11, 1997. Tr. I p. 248.

53. However, at the time of the move in, the first floor did contain a "receiving" area, a car elevator, restrooms, the semi-basement and vestibule/stairway areas. Tr. I. pp. 249-250.

54. The only usage set forth for the receiving area and car elevator area was "for the move in." Tr. I p. 249.

55. The vestibule and stairway areas provided access to the building and to the second floor. Tr. I. p. 250.

56. The first floor restrooms were used by the work crews and custodial crews as the first floor was cleaned up and prepared for development. Tr. I p. 249.

57. The semi-basement contains the controls for the building heating and air-conditioning, telephone hook-ups, and a closet where the building custodian kept his tools and repair materials. Tr. II p. 51.

58. The first floor vestibule/stairway spaces, when combined with one-half of the semi-basement area, have a combined area approximately equal to the combined areas of the second floor attributable to library and bookstore related usage.[5] App. Gr. Ex. 12.

59. Applicant has never held worship services at the property or other formal services such as baptism, funerals or marriage ceremonies. Instead, the applicant's worship services are held at an off-site rental facility. Tr. I pp. 208-214, 225.

60. After purchase of the subject property, the applicant continued to engage in fundraising for build-out of the first floor space, including written appeals to the congregation and conducting tours of congregation members through the first floor space. Tr. II p. 21.

[5] It is difficult to precisely determine the exact square footage involved because the floor plan in the record (App. Ex. No. 12) is a reduced copy (which renders useless its scale which simply indicates: 1/8" = 1-0'). Nevertheless, rough estimates using a derived scale wherein 1 square inch= 325 square feet suggests that these areas comprise roughly 650 square feet of the second floor and 650 square feet of the first floor. This is equal to approximately 3.3% of each floor: 39,288 total square feet ÷2 floors = 19,644 square feet per floor

61. Following the purchase of the subject property, the applicant sought to develop the unused open areas of the western portion of the first floor into an auditorium, a kitchen, and storage areas. Tr. I p. 242; App. Ex. No. 12.

62. The applicant sought to prepare the western half of the first floor as an auditorium for various musical or theatrical performances, speaking engagements, social gatherings, and banquets.[6] Some of these projected uses were expected to have religious content (e.g. Christian musical presentations and displays of religious art). However, other activities were not expected to have direct religious content and were instead expected to encourage fellowship and serve a community outreach function by creating awareness of the church in the community. Tr. II pp. 78- 81; Tr. III p. 46-48.

63. The applicant began "preparing the first floor for renovation" in May 1997. Tr. II. p. 14. The applicant spent the summer of 1997 "cleaning the space and preparing it in anticipation of construction." Tr. II. p. 15.

64. No building permit was required for the clean-up and preparatory work conducted by applicant on the first floor. Tr. II p. 106-107, 264.

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650 square feet ÷19,644 square feet = 3.3%.

[6] Applicant also offered a calendar which purportedly "kept track of the use of the new auditorium on the west side of the first floor after [the applicant] received permission to occupy it in 1998." Tr. II. p. 43. App. Ex. No. 18. The Department objected to admission of this document on the grounds that the calendar "deals with a year that's not at issue." See. Tr. II p. 43. The applicant declined to respond to the objection and the objection was sustained. Tr. II p. 44. Although the applicant made no argument in response to the objection, the applicant did request to make an offer of proof and was allowed to do so. Following the offer of proof, the intervenor objected to the introduction of the calendar and the objection was sustained. The applicant, in its brief, has requested that the ruling excluding the calendar be reconsidered. Following reconsideration, it is determined that the ruling during the hearing was proper.

The calendar reflects activity occurring in 1998 rather than any activity occurring during 1997, the tax year in question. Accordingly the calendar is not probative of *actual* use during 1997. Moreover, a calendar prepared in 1998 is not probative of whether, in 1997, the applicant was developing the property with the *intention* of using it for such activities in 1998. Accordingly, the calendar was properly excluded.

It is also worth noting that the exclusion of the calendar did not prejudice the applicant because the applicant was permitted to present testimony regarding the applicant's intended uses of the subject property to the extent that such intentions existed during 1997. Tr. I. p. 215; Tr. II pp. 78, 81; Tr. III p. 48. The applicant was simply prevented from relying upon documents prepared in 1998 as evidence of what its intentions were in 1997.

65. The open areas of the eastern portion of the first floor were slated for "future development." Tr. I p. 243; App. Ex. No. 12. The applicant used these areas as a "staging area" where building supplies were stored pending development of the western portion of the first floor. Tr. III. pp. 33-42.

66. Informal prayers would occasionally be offered throughout the first floor space. For example, Hanawalt would meet with his staff or construction workers and pray over the future development of the church. Tr. I pp. 286-287. Hanawalt once also offered informal prayers during an open house with 200 to 300 congregation members present. Tr. II p. 101-102.

67. Applicant applied for an exterior sign that says "Church Offices and Cultural Facility" that was approved by the city and installed around October of 1997. Tr. I pp. 273-274. See also Dept. Gr. Ex. No. 1D (p. 2 of photographs).

68. The applicant applied for the first floor building permit on September 15, 1997, and the City of Evanston issued the permit on December 2, 1997. Dept. Ex. No. 2C; Intervenor Ex. No. 4; see also Intervenor's Answer to Request to Admit Nos. 11, 14.

69. After the first floor permit was issued, Mr. Eriksson solicited final bids and selected contractors by the end of 1997, including work for the first-floor sprinkler system and the first-floor heating and cooling system. Tr. III p. 30; Tr. II pp. 254-259.

70. Electrical work, interior framing, and other work began during the second week of January, 1998. Dept. Gr. Ex. No. 2, Doc. C.

**Development and Use of the Basement**

71. The main basement was used during 1997 for operation of the building's mechanical systems and also for storage of replacement parts (*e.g.*, for ceiling tiles and blinds) used in the normal upkeep of the building. Tr. II p. 48.

72. The main basement, unlike the semi-basement is completely separate from the first floor. It is approximately one-eighth[7] the size of the first floor. Tr. III p. 45; Tr. II pp. 47-48.

**The Religious/Cultural Nature of the Applicant's Activities**

73. Religious groups, such as the applicant, often engage in several different types of activities including: worship, stewardship (gaining and dispensing of monetary and other resources for the purpose of religion), fellowship (the community coming together for social interaction purposes) and education. Tr. II pp. 134-136.

74. Non-religious organizations may engage in fellowship activities. Tr. II pp. 187-188.

75. For all of these activities, administrative functions are necessary to make the organization function efficiently and specifically to attain its goals. Tr. I pp. 118-119.

76. Music and dance may have religious functions. Tr. II pp. 163-164.

77. Music, dance, lectures, and art exhibits may also be non-religious in nature. Tr. II pp. 190-191.

78. Religious and cultural activities may sometimes overlap. Tr. II pp. 200-203.

**Zoning**

79. The City of Evanston has zoned the subject property as an O-1 Office District. Tr. I p. 24; Intervenor Ex. No. 1.

80. "Office" and "Cultural facility" are among the uses permitted in an O-1 District. Intervenor Ex. No. 1.

81. Evanston's Zoning ordinance defines a cultural facility as:

> "An indoor theatre, auditorium, or other building or structure designed, intended, or used primarily for musical, dance,

[7] Although the floor plan does not show the basement area, Rev. Hanawalt testified that the main basement occupies the area underneath what is marked as 2 to 3, and A through F on the first floor plan. This section comprises about

dramatic, or other performances, or a library, museum or gallery operated primarily for the display, rather than the sale of works of art." Intervenor Ex. No. 1.

82. Evanston's Zoning ordinance defines a Religious Institution as:

> "A church, synagogue, temple, meetinghouse, mosque, or other place of religious worship, including any accessory use or structure, such as a school, daycare center or dwelling." Intervenor Ex. No. 1

83. Evanston's Zoning ordinance defines an office as:

> "A use or structure where business or professional activities are conducted and/or business or professional services are made available to the public, including, but not limited to, tax preparation, accounting, architecture, legal services, medical clinics, *** or recreational facilities or amusements. 'Office' shall not include any use that is otherwise listed specifically in a zoning district as a permitted or special use." Intervenor Ex. No. 1

84. The applicant submitted to the intervenor a building permit application dated September 15, 1997. The application was for "interior remodeling" of the first floor of the subject property and listed "Cultural Facility" and as its type of use. Intervenor Ex. No. 4.

85. On November 6, 1997 the intervenor issued a certificate of zoning compliance for "interior remodeling of first floor a Cultural Facility." Intervenor Ex. No. 5.

86. An "Interior Remodeling Worksheet" completed by Mr. Eriksson indicated that the "intended occupancy" was a "Cultural Facility." Intervenor Ex. No. 6.

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one-eighth of the overall width of the building, marked on the survey as extending from 0 to 8. Tr. II pp. 47-48; App. Ex. No. 12.

87. A September 19, 1997 letter from Reverend Hanawalt to the intervenor's Zoning Administrator indicated that "The plans are for an indoor theatre/auditorium which we plan to use for cultural activities including musical performances, dramatic productions, lectures, and dance performances." Intervenor Ex. No. 8.

88. The applicant submitted to the intervenor a separate building permit application dated September 26, 1997. This application was for "interior remodeling" of the second floor and listed as its type of use "Office." Intervenor Ex. No. 3; Tr. I p. 236; Tr. III p. 97.

89. On November 6, 1997 the intervenor issued a certificate of zoning compliance for "interior office remodeling" of the second floor. Intervenor Ex. No. 3.

**ANALYSIS**

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption for 50% of building located on the subject property for 48% of the tax year. The applicant also demonstrated that 100% of the parking area qualifies for exemption for 48% of 1997 tax year. In support thereof, I make the following conclusions:

Article IX, section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). Furthermore, article IX, section

6 does not in and of itself grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill.2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist.1983).

Prior to 1909, the law required that religious property exemptions would be granted only if the party using the property for religious purposes also owned the property. People *ex rel.* Bracher v. Salvation Army, 305 Ill. 545 (1922). Since that time however, statutory changes have eliminated the ownership requirement. *Id.* Thus, today the main prerequisite for a religious property tax exemption, in cases not involving parsonages,[8] is that the property in question be "used exclusively for religious purposes." 35 ILCS 200/15-40.[9] In People ex rel. McCullough v. Deutsche Germeinde, 249 Ill. 132, 136-137 (1911) our supreme court stated that "a religious purpose means a use of such property by a religious society or body of persons as a stated place for public worship, Sunday schools and religious instruction." However, the court subsequently clarified that statement and noted that it was not intended to be "inclusive of everything that might in the future be regarded as a use for religious purposes but as illustrative of the nature of such use." People ex rel. Carson v. Muldoon, 306 Ill. 234, 238 (1922).

Here, the subject property was used for a variety of purposes in 1997. It is well established that where property is used for varied purposes, "there is nothing novel in exempting the part used for an exempt purpose and subjecting the remainder to taxation." Illinois Institute

[8] In addition to religious use, an applicant seeking exemption for a parsonage must also establish that the parsonage was owned by a religious institution. Immanuel Evangelical Lutheran Church v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

[9] The word "exclusively," when used in tax exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987); Pontiac Lodge No. 294, A.F. & A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1993).

of Technology v. Skinner, 49 Ill. 2d 59 (1971); see also Mount Calvary Baptist Church v. Zehnder, 302 Ill. App. 3d 661 (1st Dist. 1998) ("The Department argues that where, as here, a portion of the property is used for an exempt purpose and a portion is not, that property may be divided and the nonexempt portion taxed. The Department is correct that numerous case have so held."). Thus, the primary issue in the case at hand is which portions, if any, of the subject property were used primarily for religious purposes. Resolving this issue is complicated by the fact that Illinois courts have never set forth an all-inclusive definition or specification of what constitutes a religious purpose. Evangelical Teacher Training Ass'n v. Novak, 118 Ill. App. 3d 21 (2nd Dist. 1983).

Nevertheless, in the case at hand it is readily apparent that the majority of the second floor of the applicant's building qualifies for exemption. The portions of the second floor used for religious counseling activities and youth religious programs obviously qualify as use for religious purposes. Moreover, it is apparent from the case law that property used as a religious organization's administrative office or religious training center qualifies for exemption. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App. 3d 431, 434 (2nd Dist. 1987). Thus the administrative and administrative support portions of the second floor also qualify for exemption because they "reasonably and substantially" facilitate the applicant's religious purposes. *Id.* at 444.

Although the evidence establishes that most of the second floor qualifies for exemption, there were portions of the second floor which were used for purposes whose nature was not disclosed. Specifically, there was no evidence establishing that a primarily religious, as opposed to primarily secular, usage occurred in the library rooms, the bookstore manager's office, and the space reasonably attributable to bookstore storage. Accordingly, those areas of the second floor do not qualify for exemption.

Having established that the majority of the second floor was used for religious purposes, the question becomes when did those uses, or "development and adaptation" for those uses, commence. See Weslin Properties Inc. v. Department of Revenue, 157 Ill. App. 3d 580, 586 (1987) (holding that property qualifies for exemption while it is in the actual process of "development and adaptation for an exempt use").

It is apparent from the record that the applicant's usage of the second floor for religious purposes began on July 11, 1997. Although cleanup activities and minor repairs commenced prior to that time, I find that such activities, under the overall circumstances of this case, were not significant enough to constitute the process of "development and adaptation for exempt use" as contemplated in Weslin. *Id.* This was not a situation wherein the subject property was temporarily vacant between exempt uses pending substantial repairs and redevelopment necessitated by an intervening catastrophic event. Compare Mount Calvary Baptist Church, Inc. v. Zehnder, 302 Ill.App.3d 661, 669, (1st Dist. 1998). Nor was this a situation where the cleaning of the property was shown to be a necessary prerequisite to "development and adaptation" whereby the cleaning could be imputed to be a part of the process of development and adaptation. In short, there was no evidence that the second floor required any real "development and adaptation" prior to the actual occupation date. In fact, the only real "development and adaptation" of the second floor was the remodeling which took place after the applicant was already using the second floor. See Intervenor Ex. No. 3; Tr. I pp. 236, 263-264; Tr. II pp. 260-261; Tr. III p. 97. Accordingly those portions of the second floor which qualify for exemption from 1997 taxes only qualify for exemption for that 48% of the tax year beginning on the July 11, 1997 move-in date and ending on December 31, 1997.

Unlike the second floor, the majority of the first floor does not qualify for exemption because it was primarily vacant and not used for any exempt activities during 1997. The applicant's arguments that the entire first floor qualify for exemption by virtue of the occasional

prayers that were offered there is completely without merit and based upon a misreading of Mount Calvary Baptist Church 302 Ill.App.3d 661, 669, (1st Dist. 1998).

In Mount Calvary, a fire caused a temporary interruption in use of a church building. The court held that "where a property already is devoted to a religious purpose as the cite of a place of worship, and has been so devoted for numerous years, *an incidental interruption of its actual use* for that religious purpose due to a fire will not destroy the exemption." *Id*. at 670 (emphasis added). Although there was testimony that people would "sometimes" go to the church and pray even in its burned-out state (*id*. at 669) the court did not uphold the exemption based upon such occasional prayers constituting religious use. In fact, as the above-emphasized language reveals, the court specifically recognized that the religious use had been *interrupted*. The court merely noted the evidence of occasional prayers at the site as support for its conclusion that "The property was the site of an existing church, which, but for the 1989 fire, presumably *would have* continued to be used, as it had been used for years, as a place of worship." *Id*. at 669 (emphasis added). To read Mount Calvary as suggesting that holding occasional prayers at a location is enough to justify exemption would play havoc with exemption law by permitting exemptions for virtually any land simply because people traversed over it while saying prayers. Accordingly, I conclude that Mount Calvary in no way requires that the entire first floor of the subject property qualify for exemption based upon the mere fact that informal prayers were occasionally offered at the site.

Merely because the entire first floor does not qualify for exemption based upon the occasional informal offering of prayers does not mean that *portions* of the first floor may not qualify based upon other grounds. See generally Illinois Institute of Technology, *supra*. Accordingly, the question becomes, which portions, if any, of the first floor were used primarily for religious purposes or reasonably necessary to allow religious use of the subject property.

In 1997, the applicant had plans to use the western portion of the first floor as a "cultural center." While cultural activities may certainly have religious components and content, here the applicant did not establish that in 1997 it intended to use the cultural center for primarily religious purposes as opposed to primarily for secular activities which may have had minor religious components.[10]

Moreover, any claims that this space served a religious recruitment or fellowship function must be rejected as being too attenuated. To hold otherwise would open the exemption floodgates to a myriad of property used primarily for social purposes merely because the social activities are hosted by religious organizations. Such a result would fly in the face of the limitations on exemption imposed by our state constitution.

Even if the applicant's proposed cultural center uses were deemed to constitute use for religious purpose, the applicant would still not be entitled to an exemption for that portion of the subject property for 1997 because the cultural center was neither open in 1997, nor in the process of development and adaptation. It is true that the applicant engaged in some preliminary clean-up and preparatory work of that portion of the first floor, which the applicant intended to use for a cultural center. However, there was no clear evidence of actual development and adaptation of that area during 1997. The evidence indicates that a first-floor building permit was not issued until December of 1997 and that Erickson then solicited final bids for work which actually commenced in 1998. See Dept. Gr. Ex. No. 2, Doc. C. Accordingly, there was no clear and convincing evidence that in 1997 the western portion of the first floor was subject to any actual "physical adaptation" and development for cultural center use. Weslin Properties Inc. v.

[10] In this regard it is noted that in 1997 the applicant's intended use of the proposed cultural center appears somewhat similar to other non-exempt uses which have incidental religious components (e.g. a wedding banquet hall where blessings are bestowed upon a brides and grooms; a community theatre which puts on a production of "Jesus Christ Superstar"; or a grocery store which sells kosher food). See generally St. Augustines Center for American Indians, Inc. v. Department of Labor, 114 Ill. App. 3d 621 (1st Dist. 1983) (holding that although

Department of Revenue, 157 Ill. App. 3d 580, 585 (1987). Rather, given the overall circumstances of this case, I conclude that the clean-up and preparatory work reflected "a mere intention to convert the property" for use as a cultural center in 1997. *Id*. at 586. Under these circumstances, the western portion of the first floor would not qualify for exemption from 1997 property taxes even if the applicant's intended use of the cultural center were deemed to be religious in nature.

With regard to eastern half of the first floor it is clear that in 1997 it was primarily vacant. Any possible basis for exemption of the eastern half would be based upon it being reasonably necessary to facilitate development of the western half for religious purposes. However, such an argument fails here because: (1) as previously noted there was insufficient evidence of development of the western half for religious purposes in 1997; and (2) staging areas used to facilitate development of property do not qualify for a religious exemption even where the property being developed is to be used for religious purposes (to hold otherwise would lead to the absurd result that a private building contractor's office would qualify for exemption in years where the contractor's primary project is the construction of a church). Thus, the eastern portion of the first floor does not qualify for exemption from 1997 property taxes.

Although the majority of the first floor does not qualify for a religious exemption, portions of the first floor do qualify on the basis that they were reasonably necessary in order for the applicant to pursue its exempt religious purposes on the second floor. Specifically, the first floor vestibule/stairway areas provided necessary ingress and egress to the second floor and were therefore reasonably necessary to allow the applicant to engage in the religious activities occurring on the second floor. Likewise, one-half[11] of the semi-basement (which contained space reasonably necessary to support both the exempt and non-exempt portions of the building.)

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the plaintiff organization offered religious services, the organization's primary purpose was to offer social services).

could be considered reasonably necessary for the exempt use of the second floor. Accordingly, those limited portions of the first floor qualify for exemption. Because the space on the first floor attributable to exempt use is roughly equal to the space on the second floor attributable to non-exempt use, I conclude that (ignoring for now the main basement) one-half of the building qualified for exemption for the 48% of the tax year during which those portions of the building were used for exempt purposes.

Having concluded that one-half of the building (excluding the main basement) qualified for a partial year exemption, the next question that needs to be answered is what portion, if any, of the main basement year qualifies for exemption. This presents a somewhat unusual problem because the basement contained the mechanical systems and storage for the entire building -- both the exempt areas and the non-exempt areas. The parties did not squarely address the problems presented by this situation, presumably because they did not anticipate that the Department's initial determination that one-half of the subject property was in exempt use would be upheld.

Had the parties anticipated that one-half of the first and second floors was in exempt use while one-half was not, it is expected that the applicant would have argued that the entire basement should be exempt because it was reasonably necessary to support the applicant's religious uses of the subject property and not readily divisible into specifically identifiable exempt and non-exempt portions. On the other hand, the intervenor would be expected to argue that none of the basement qualifies for exemption because it was used to support the non-exempt areas every bit as much as it was used to support the exempt areas. There appears to be no published case law in this state squarely addressing whether areas equally necessary to support both exempt and non-exempt use qualify for exemption. However, based upon the particular facts of this case, it appears that although not readily divisible in to specifically identifiable

[11] For the rationale underlying the semi-basement exemption being limited to one-half of the

portions, one-half of the basement should be considered as supporting exempt use and one-half should be considered as not supporting any exempt use. Accordingly it is recommended that one-half of the basement is entitled to exemption for the 48% of the 1997 tax year during which it was reasonably necessary to support the applicant's exempt use of one-half of the building.

The final area that needs to be addressed is the parking lot. Under Section 15-125 of the Property Tax Code, in order for the parking lot to qualify for exemption the applicant was required to show not only that the parking lot was reasonably necessary[12] for the applicant's exempt purposes, but also that the parking lot was owned by a religious institution. Here, the applicant's evidence established that the applicant was a religious institution and that it owned the property from May 8, 1997 through December 31, 1997. Thus, the only real question is when, if ever, during that time period was the parking lot reasonably necessary for the applicant's religious use of the building.

The applicant's evidence indicates that the applicant began using the parking area immediately after the purchase of the subject property. The nature of that use was not clearly broken down. However, it is clear that prior to July 11, 1997 the building was basically vacant and no portion of the building was being used for exempt purposes. Thus, no portion of the parking lot may qualify for exemption prior to July 11, 1997.

After July 11, 1997 the applicant began using one-half the building for religious purposes while the remainder of the building remained basically vacant and unused. Because after July 11, 1997, the only real use of the building was that a portion of it was being used for religious purposes, it may be fairly concluded that the only real use the applicant made of the parking lot

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semi-basement, see the discussion relating to the main basement area (*infra* at pp. 22-23).

[12] It is acknowledged that the exact statutory language is "used as a part of a use for which an exemption is provided." 35 ILCS 200/15-125. However, this language equates to "reasonably necessary" for an applicant's exempt purposes. See Northwestern Memorial Foundation v. Johnson 141 Ill. App. 3d. 309 (1st Dist. 1986). For ease of reading "reasonably necessary" will be used in place of the statutory language.

was to provide parking related to those religious activities. Under these circumstances and in light of the relatively small size of the parking lot it would appear that the primary use of the parking lot was in support of the applicant's religious use of the building. Accordingly the entire parking area qualifies for exemption for the 48% of the 1997 tax year during which religious use was occurring at the subject property. Obviously, this conclusion is warranted only for 1997 because the cultural center was not open in 1997 and thus there would have been no use of the parking lot for non-exempt cultural center activities and any uses of the parking lot relating to the preparation of the lower level for construction of the cultural center would constitute nominal incidental use. Thus, 100% of parking lot qualifies for exemption for 48% of the 1997 tax year.

Before this recommendation is concluded, I believe it proper to briefly address two related contentions raised by the intervenor. The intervenor contends no exemption should be granted because any religious use of the subject property by the applicant is a zoning violation and that granting an exemption under such circumstances would violate public policy. See Intervenor's Brief at pp. 29-30. The intervenor also contends that the applicant engaged in "misrepresentation" to "either City of Evanston or the Board of Appeals" which should preclude the granting of an exemption.

The Intervenor's arguments might have had merit if a court of competent jurisdiction had made a determination that the applicant had violated a zoning ordinance or engaged in misrepresentation. However, as was noted in an order previously entered in this case (see October 4, 1999 order), there has been no determination of such a zoning violation by a court of competent jurisdiction. Moreover, there has been no determination of misrepresentation by a court of competent jurisdiction.

The Department's jurisdiction in property tax exemption matters is limited to making a determination of "whether the property is or is not legally liable to taxation." 35 ILCS 200/16-70. In so doing, the Department could obviously consider prior court rulings which represent

binding determinations that zoning violations or misrepresentations have occurred. However, where such determinations have not been made by courts of general jurisdiction, the Department must be cautious not to assume the role of deciding such controversies.

In light of the absence of a determination by a court of general jurisdiction that a zoning violation or misrepresentation has occurred the intervenor's argument must necessarily fail. This is not to say that the intervenor's arguments may not be subsequently raised before a court of general jurisdiction. In fact, all the cases cited by the intervenor (see Intervenor's Brief at pp. 29-30) involve situations where such matters were decided by courts with jurisdiction over such matters as opposed to administrative agencies with limited jurisdiction.

For the reasons set forth above, the Department's determination that 50% of the subject property is entitled to exemption for 48% of the 1997 tax year should be affirmed except for with respect to the parking area which should be 100% exempt for 48% of the 1997 tax year.

March 13, 2000

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Robert C. Rymek
Administrative Law Judge